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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 717/2025 and CM APPL. 3541/2025

BLS INTERNATIONAL SERVICES LTDPetitioner
Through: Mr. Naman Joshi, Ms. Ritika Vohra
and Ms. Amber Tickoo, Advocates.

versus

UNION OF INDIA & ANR.Respondents
Through: Ms. Nidhi Raman, CGSC alongwith
Mr. Zubin Singh and Mr. Akash
Mishra, Advocates for UoI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

ORDER
20.01.2025

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CM APPL.3542/2025 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 717/2025

3. The present petition has been filed by the petitioner seeking quashing of the show cause notice dated 09.01.2025 and consequent direction/s that the respondents be restrained from encashing the petitioner's bank guarantee submitted along with its bid, pursuant to the Request for Proposal dated 04.07.2024 (hereinafter 'RfP') for appointment of a helpdesk service provider for augmentation, operationalization, management and ongoing support of a Mother and Child Tracking Facilitation Centre (hereinafter "*the MCTFC*").
4. It is contended on behalf of the petitioner that the proposed invocation of the bank guarantee/earnest money deposit (hereinafter '*the EMD*') is



illegal inasmuch as: (i) petitioner is not in breach of the conditions set out in the RfP floated by the respondent no.1, (ii) the petitioner can only encash the bank guarantee/EMD subject to the conditions precedent to the RfP i.e. failure to execute contract upon award or failure to furnish a Performance Bank Guarantee, the occasion for which has not arisen since the petitioner has been disqualified at the technical stage itself. Reliance is sought to be placed on clause 8.13 of the RfP which provides as under:-

*“• The EMD can be forfeited if a bidder
a. Withdraws its bid during the period of bid validity or
b. Does not accept the correction of errors or
c. To furnish performance bank guarantee in accordance with Form 15 of Annexure 5.”*

5. Learned standing counsel for the respondents vehemently opposes the present petition. She contends that the EMD is liable to be forfeited inasmuch as Clause 8.13 of the RfP also specifically provides as under:-

*“In case the bidder is found in breach of any condition(s) of this RFP, at any stage, legal actions per rules/laws, shall be initiated against the bidder and EMD will be forfeited.
Bids that do not accompany EMD shall be summarily rejected.”*

6. She also draws attention to Clause 9.8 of the RfP which speaks of ‘fraud and corrupt practices’ and which clearly contemplates that in the event of any bidder indulging in any fraudulent practices, the EMD/performance security shall be forfeited. The said clause goes on say that the amount of the EMD/performance security has been mutually agreed upon to be in the nature of a genuine pre-estimate of compensation and damages payable to the MOHFW for, *inter alia*, time, cost and efforts on behalf of the MOHFW in the consideration and evaluation of the bid.

7. Specific attention is drawn to the definition of fraudulent practices



which is as under:-

“"Fraudulent practice" means a misrepresentation or omission of facts or disclosure of incomplete facts, to influence the selection process.”

8. It is pointed out that one of the mandatory pre-qualification criteria is as under:-

“11. The bidder (each member in case of consortium) should not have withdrawn from similar government projects or should not have any contract termination from similar project with Govt. of India/State Govt./Govt. Agencies in the last 3 years from the date of submission of the bid.”

9. It is submitted that it was discovered pursuant to submission of the bid that action has been taken against the petitioner, *qua* other contracts in relation to projects with government agencies, for termination. One of the projects was also afflicted on account of “withdrawal” by one of the consortium partners of the petitioner. In the circumstances, the petitioner did not even meet the pre-qualification criteria and was ineligible to bid. It was only on the strength of a false certificate that the petitioner participated in the bid. As such, having committed a “fraudulent practice”, the EMD/performance guarantee submitted by the petitioner is liable to be forfeited.

10. Admittedly, the petitioner has given a reply to the Show Cause Notice dated 09.01.2025 wherein it has purported to take defences in response to the proposed action of forfeiture of the EMD/performance guarantee.

11. Given that a show cause notice has already been issued to the petitioner pointing out its lapse/s, as also highlighted by the standing counsel herein, and given that the petitioner has responded thereto, at this stage, considering that a decision remains to be taken pursuant to the said show



cause notice, this Court is not inclined to entertain the present petition.

12. In the opinion of this Court, it would be apposite for the concerned authority, which has issued the show cause notice, viz. Joint Director, MMPC, Ministry of Health and Family Welfare, to consider the reply of the petitioner and also afford an opportunity of hearing to the petitioner, and thereafter take an appropriate decision in the matter as to whether the concerned EMD/Security deposit is liable to be forfeited or not.

13. Let an opportunity of hearing be also provided by the said authority to the petitioner within a period of three weeks from today and an appropriate decision be taken thereafter by way of a reasoned order.

14. Till the conclusion of the aforesaid exercise, the respondents shall not take steps to encash the concerned bank guarantee.

15. Any observation made in this order shall not be construed as an expression of opinion of this Court as regards the merits of the impugned show cause notice.

16. With the above directions, the present petition stands disposed of.

SACHIN DATTA, J

JANUARY 20, 2025/at